IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.133 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
PALLAVI MAYOR (GM) TRUST NO 73 - Respondent(s)

==========

Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR RK PATEL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 20/09/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred at the instance of the revenue by the Income-tax Appellate Tribunal under Section 256(1) of the Income-tax Act, 1961:

> "Whether, the Appellate Tribunal is right in law and on facts in holding that there was no transfer in the present case and therefore there was no taxable capital gains ?"

2. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the revenue and Mr.R.K.Patel, learned advocate for the assessee. It is common ground between the parties that the reference ought not to be answered in light of the facts and circumstances of the case considering that the assessee herein is a shareholder of the same company in which, in case of other shareholders, the reference has been left unanswered because of the stand taken by the revenue.

3. Therefore, in light of the decision of this Court as recorded in case of *CIT Vs. Leena Sarabhai (N.CH),* (1996) 221 ITR 520, this reference is left unanswered and stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

***

*Bhavesh**